

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA

Plaintiff,

v.

PHARMACIA CORPORATION
(p/k/a Monsanto Company) and
SOLUTIA INC.,

Defendants.

CIVIL ACTION NO. CV-02-PT-0749-E

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PARTIAL CONSENT DECREE

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Sections 106, 107, and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606, 9607, §9613(g)(2).

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs to be incurred by EPA and the Department of Justice for response actions at the Anniston PCB Superfund Site in Anniston, Calhoun County, Alabama, (“Site”); (2) performance of studies and response work by the Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”), and (3) a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages pursuant to Section 113(g)(2), 42 U.S.C. §9613(g)(2).

C. This Partial Consent Decree (“Consent Decree”), which was filed along with the United States complaint, seeks to partially resolve the claims of the Plaintiff against the Defendants by, inter alia, the payment of Future Response Costs and Administrative Order on Consent (AOC) Oversight Costs, the performance of a Remedial Investigation/Feasibility Study (RI/FS) pursuant to the attached RI/FS Agreement, and continuation of a removal action pursuant to the attached Removal Order. The Parties acknowledge that this Consent Decree does not resolve portions of the United States’ claims against Defendants under Sections 106, 107, and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9606, 9607, 9613(g)(2) with respect to the Site. The Parties acknowledge that it will be necessary to enter into a separate Consent Decree in the future to address the remedy selected in the ROD and to address all costs associated with the Site incurred by EPA after the public participation period for the ROD. Nothing in this Consent Decree, the RI/FS Agreement, the Removal Order, or the complaint filed with this Consent Decree shall be construed to grant the Defendants or any other party the right to seek judicial review of the ROD, or any other response actions taken by EPA at the Site. As provided in Paragraph 46, Defendants shall not assert, and may not maintain that the claims raised by the United States in any subsequent proceeding (including, but not limited to, the filing of another consent decree with this Court) were or should have been brought in the instant case.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of Interior and the National Oceanic and Atmospheric Administration on November 19, 2001 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. EPA notified the Alabama Department of Environmental Management on November 19, 2001 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under State trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

F. The Site is not currently listed on the National Priorities List (NPL).

G. The Defendants that have entered into this Consent Decree (“Defendants”) do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

H. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j) the RI/FS Work and Removal Order Work to be performed by the Defendants pursuant to this Consent Decree, shall constitute a response action taken or ordered by the President.

I. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). Venue is proper in the United States District Court for the Northern District of Alabama pursuant to 28 U.S.C. § 1391 because the Defendants’ Property is located in this District. This Court also has personal jurisdiction over the Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Defendants shall not challenge the terms of this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Defendants and their successors and assigns. Any change in ownership or corporate status of a Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Defendant’s responsibilities under this Consent Decree.

3. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply (provided, however, if an appendix defines one of the terms listed below, then the definition in the appendix shall apply to that appendix):

“ADEM” shall mean the Alabama Department of Environmental Management and any successor departments or agencies of the State.

“AOC Oversight Costs” shall have the meaning set forth in the attached Removal Order.

“Anniston PCB Site Special Account” shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3).

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

“Consent Decree” shall mean this Decree and all appendices (including the RI/FS Agreement, the Removal Order, and the SOW) attached hereto and listed in Section XVI.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Defendants” shall mean Pharmacia Corporation (p/k/a Monsanto Company) and Solutia Inc.

“Defendants’ Property” shall mean the property owned by Defendants as of January 1, 2002, as marked on the attached map (Figure 1.)

“Effective Date” shall be the date of entry by the Court of this Consent Decree as provided in Paragraph 48.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Future Response Costs” shall mean all costs, except ATSDR costs, that the United States incurs through the public participation period for the ROD with respect to the RI/FS Agreement and/or the Consent Decree. Future Response Costs may include, but are not limited to, costs incurred by the U.S. Government in overseeing Respondents' implementation of the requirements of the RI/FS Agreement, verifying the RI/FS Work, or otherwise implementing, overseeing, or enforcing the RI/FS Agreement and/or this Consent Decree and any activities performed by the government as part of the RI/FS, including community relations and any costs incurred while obtaining access. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, site visits, discussions regarding disputes that may arise as a result of the RI/FS Agreement or Consent Decree, review and approval or disapproval of reports, and costs of redoing any of Respondents' tasks. Future Response Costs shall also include all Interim Response Costs. Provided, however, removal AOC Oversight Costs are not Future Response Costs pursuant to this Consent Decree. Defendants shall reimburse EPA for removal AOC Oversight Costs as provided in the Removal Order. Future Response Costs do not include costs that the United States incurs at the Anniston Lead Site.

“Interim Response Costs” shall mean all costs, except ATSDR costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between January 4, 2001 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date. Provided, however, removal AOC Oversight Costs are not Interim Response Costs pursuant to this Consent Decree. Defendants shall reimburse EPA for removal AOC Oversight Costs as provided in the Removal Order. Interim Response Costs do not include costs paid by the United States in connection with the Anniston Lead Site.

“Interest,” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“October 27, 2000 AOC” shall mean the Administrative Order on Consent, docket no. 01-02-C, for a removal action regarding the Anniston PCB Site (Site) which was effective on October 27, 2000. The October 27, 2000 AOC was rescinded and replaced by the Removal Order.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

“Parties” shall mean the United States and the Defendants.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

“RCRA Permit” shall mean the RCRA Post Closure Permit, ALD 004019048, issued by ADEM on January 7, 1997 as modified on May 21, 2001, and any subsequent modifications thereto.

“Remedial Investigation/Feasibility Study (RI/FS)” shall mean the response actions identified in 40 C.F.R. § 300.5 undertaken by Defendants pursuant to the RI/FS Agreement to determine the nature and extent of contamination at the Anniston PCB Site and develop and evaluate potential remedial alternatives.

“Removal Order” shall mean the Administrative Order on Consent, docket no. CER-04-2002-3752, for a removal action regarding the Anniston PCB Site (Site) which was effective on October 5, 2001. The Removal Order is set forth in Appendix C to this Consent Decree.

“Removal Order Work” shall mean all activities Defendants are required to perform pursuant to the attached Removal Order.

“RFI” shall mean the work being conducted pursuant to Defendants’ RCRA Permit.

“RI/FS Agreement” shall mean the Agreement for the RI/FS at the Site, as set forth in Appendix A to this Consent Decree.

“RI/FS Work” shall mean all activities Defendants are required to perform pursuant to the attached RI/FS Agreement. RI/FS Work does not include any activities or work EPA determines to be necessary at any other Site (including the Anniston Lead Site). RI/FS Work does not include any additional activities or work that EPA determines to be necessary after EPA approval of the certification of completion issued pursuant to Paragraph 88 of the RI/FS Agreement.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Site” shall mean, for the purposes of this Consent Decree, the Anniston PCB Site, which consists of the area where hazardous substances, including PCBs (associated with the historical and ongoing operations of the Anniston plant by Solutia Inc., Monsanto Company, and their predecessors) have come to be located. The Site includes, but is not limited to, the area covered by the RCRA Permit.

“State” shall mean the State of Alabama.

“Statement of Work” or “SOW” shall mean the Statement of Work for implementation of the RI/FS Agreement, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

“United States” shall mean the United States of America.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

V. GENERAL PROVISIONS

5. Objectives of the Parties.

The objectives of the Parties in entering into this Decree are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, by conducting a Remedial Investigation; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting a Feasibility Study; (c) to recover Future Response Costs and AOC Oversight Costs incurred by EPA with respect to the Site, (d) to create a foundation to benefit the citizens of west Anniston, (e) to provide funding for a Technical Assistance Plan (TAP) and a Community Advisory Group (CAG) for the affected community, (e) to incorporate the existing Removal Order into this Consent Decree and, (f) to partially resolve the claims of the Plaintiff against the Defendants.

6. Commitments by Defendants.

a. Defendants shall finance and perform the RI/FS Work and Removal Order Work in accordance with this Consent Decree, the RI/FS Agreement, the SOW, and the Removal Order and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Defendants and approved by EPA pursuant to this Consent Decree. Defendants shall also reimburse the United States for Future Response Costs as provided in this Consent Decree and the RI/FS Agreement, and AOC Oversight Costs as provided in the Removal Order. Defendants shall also provide funding for a foundation to benefit the citizens of west Anniston, a Technical Assistance Plan (TAP), and a Community Advisory Group (CAG).

b. The obligations of Defendants to finance and perform the RI/FS Work and Removal Order Work and to pay amounts under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more of the Defendants to implement the requirements of this Consent Decree, the remaining Defendants shall complete all such requirements.

7. **Compliance With Applicable Law.** All activities undertaken by Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and

state laws and regulations. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. EPA entered into a Removal Order for a removal action regarding the Anniston PCB Site which was effective on October 5, 2001. The Removal Order is hereby incorporated into this Consent Decree. Nothing in this Consent Decree shall modify Solutia Inc.'s obligations under the Removal Order. The Dispute Resolution provisions of the Removal Order shall control any dispute regarding the Removal Order, and Solutia Inc. shall pay AOC Oversight Costs pursuant to the Removal Order.

9. EPA and Defendants executed an RI/FS Agreement which is attached hereto. The effective date of the RI/FS Agreement, shall be the date this Consent Decree is entered by the Court.

VI. CREATION OF A FOUNDATION FOR THE CITIZENS OF WEST ANNISTON

10. Defendants shall create a foundation for the benefit of the residents of west Anniston within 180 days from the Effective Date of this Consent Decree. The foundation shall be established under applicable law governing non-profit charitable organizations in order to qualify for tax exempt treatment within the meaning of Section 501(c)(3) of the Internal Revenue Code. The foundation shall be created for the following purpose: to provide special education, tutoring, or other supplemental educational services for the children of west Anniston that have learning disabilities or otherwise need additional educational assistance.

11. Defendants shall wire transfer to the foundation or to an existing entity or entities selected by the foundation, or to an escrow account (designated for the foundation) a total of \$3,218,846 pursuant to the payment schedule noted below. The first payment shall be made within sixty (60) days from the Effective Date of this Consent Decree. Defendants shall make the payments required for years two through twelve annually between January 1 and January 31, beginning in the first January after the Effective Date of this Consent Decree. The payments required each year shall be as follows:

Year 1:	\$150,000
Year 2:	\$102,000
Year 3:	\$84,000
Year 4:	\$0
Year 5:	\$0
Year 6:	\$364,996
Year 7:	\$379,596
Year 8:	\$394,780
Year 9:	\$410,571
Year 10:	\$426,994
Year 11:	\$444,073
<u>Year 12:</u>	<u>\$461,836</u>
Total	\$3,218,846

If Defendants fail to make the payments required pursuant to this Paragraph, Defendants shall pay Interest on the unpaid balance to the foundation or to an existing entity or entities selected for the foundation or to an escrow account (designated for the foundation). Defendants shall provide EPA with documentation indicating that the payments have been made within thirty (30) days from the date of payment.

12. The foundation shall seek input from the CAG created pursuant to this Consent Decree, any consultants retained by Defendants, as well as representatives of the community at large, including educators, the Superintendent of Schools, the School Board and other local officials, in order to determine the following:

- a) how these funds shall be expended;
- b) whether the funds shall go to an existing entity or entities, or whether a new entity or entities shall be created;
- c) how the new entity or entities should be structured if the funds do not go to an existing entity or entities; and
- d) what limitations shall be placed on the recipient regarding the use of the funds.

After receiving such input, the foundation shall make written determinations regarding a-d above. Defendants shall provide EPA a copy of the foundations written determinations and make them available to the public.

13. All proceeds shall be spent in accordance with the requirements of the foundations written determinations. Defendants shall provide EPA with an annual accounting every January for at least twelve years after the Effective Date of this Consent Decree documenting all expenditures pursuant to this Section. If all funds are not expended within twelve years from the Effective Date, Defendants shall continue to provide the annual accounting until all funds are expended. The accounting shall certify whether all expenditures were made in accordance with the foundations written determinations. Defendants will purchase insurance or a bond to assure that the foundation and entity or entities selected by the foundation perform in accordance with the foundations written determinations.

VII. STIPULATED PENALTIES

14. Defendants shall be liable for stipulated penalties to the United States for failure to comply with the requirements of this Consent Decree specified below. The following stipulated penalties shall accrue per violation per day for failure to make the payments required pursuant to Section VI (Creation of a Foundation For The Citizens of West Anniston).

Penalty Per Violation Per Day	Period of Noncompliance
\$750	1st through 14th day
\$2,000	15th through 30th day
\$5,000	31st day and beyond

15. Following EPA's determination that Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Defendants written notification of the same and describe the noncompliance. EPA may send the Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Defendants of a violation.

16. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the Defendants' receipt from EPA of a demand for payment of the penalties. All payments to the United States under this Section shall be paid by 1) certified or cashier's check made payable to the "EPA Hazardous Substance Superfund," shall be mailed to U.S. EPA Region 4, Superfund Accounting, Attn: Collection Officer in Superfund, P.O. Box 100142, Atlanta, GA 30384, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #04S9, the DOJ Case Number 90-11-2-07135/1 and the name and address of the party making payment, or 2) if the amount is greater than \$10,000 payment may be made by FedWire Electronic Funds Transfer ("EFT")¹. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), or notification of electronic wire transfer of funds, shall be sent to Dustin F. Minor, U.S. EPA Region 4, Environmental Accountability Division, 61 Forsyth Street, S.W., Atlanta, GA 30303-8960, and to Paula V. Batchelor, U.S. EPA Region 4, 4WD-PSB/11th floor, 61 Forsyth Street, S.W., Atlanta, GA, 30303-8960, or their successors.

17. The payment of penalties shall not alter in any way Defendants' obligation to complete the performance of the RI/FS Work and Removal Order Work required under this Consent Decree.

18. If Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest.

19. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, EPA's right to conduct all or part of the RI/FS itself or to seek penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l).

20. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

¹ If EFT is used payment shall be made to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, EPA Site/Spill ID Number 04S9, and DOJ Case Number 90-11-2-07135/1. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Alabama. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

VIII. DISPUTE RESOLUTION

21. The Dispute Resolution provisions of the RI/FS Agreement shall be the exclusive mechanism to resolve disputes arising under or with respect to the RI/FS Agreement. The Dispute Resolution provisions of the Removal Order shall be the exclusive mechanism to resolve disputes arising under or with respect to the Removal Order. This Dispute Resolution Section is only applicable to requirements that are contained in the Consent Decree itself, and is not applicable to disputes regarding the RI/FS Agreement or the Removal Order.

22. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Defendants that have not been disputed in accordance with this Section. As provided in Paragraph 21, this Dispute Resolution Section does not apply to any disputes regarding the RI/FS Agreement or the Removal Order.

23. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

24. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within twenty-eight (28) days after the conclusion of the informal negotiation period, Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Defendants. The Statement of Position shall specify the Defendants' position as to whether formal dispute resolution should proceed under Paragraph 25 or Paragraph 26.

b. Within twenty-eight (28) days after receipt of Defendants' Statement of Position, EPA will serve on Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 25 or 26. Within fourteen (14) days after receipt of EPA's Statement of Position, Defendants may submit a Reply.

c. If there is disagreement between EPA and the Defendants as to whether dispute resolution should proceed under Paragraph 25 or 26, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the

Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 25 and 26.

25. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Waste Management Division, EPA Region 4, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 25.a. This decision shall be binding upon the Defendants, subject only to the right to seek judicial review pursuant to Paragraph 25.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 25.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Defendants with the Court and served on all Parties within twenty (20) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Defendants shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 25.a.

26. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Defendants' Statement of Position submitted pursuant to Paragraph 24, the Director of the Waste Management Division, EPA Region 4, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on

the Defendants unless, within twenty (20) days of receipt of the decision, the Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Defendants' motion.

b. Notwithstanding Paragraph H of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

27. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

IX. REIMBURSEMENT OF RESPONSE COSTS

28. Payments for Future Response Costs. Defendants shall pay to EPA all Future Response Costs as provided in the RI/FS Agreement.

29. Payments for AOC Oversight Costs. Defendants shall pay to EPA AOC Oversight Costs as provided in the Removal Order.

X. COVENANTS NOT TO SUE BY PLAINTIFF

30. In consideration of the actions that will be performed and the payments that will be made by the Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraph 31 of this Section, the United States covenants not to sue or to take administrative action against Defendants pursuant to Sections 106 and 107(a) of CERCLA for performance of the RI/FS Work and Removal Order Work and for recovery of Future Response Costs and AOC Oversight Costs as defined herein. These covenants not to sue shall take effect upon EPA approval of the certification of completion submitted pursuant to Paragraph 88 of the RI/FS Agreement. These covenants not to sue are conditioned upon the satisfactory performance by Defendants of their obligations under this Consent Decree, the RI/FS Agreement, and the Removal Order. These covenants not to sue extend only to the Defendants and do not extend to any other person.

31. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all matters not expressly included

within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Defendants with respect to:

- a. claims based on a failure by Defendants to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the RI/FS Work, the Removal Order Work, or otherwise ordered by EPA;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of federal or state law which occur during or after implementation of the RI/FS Work and Removal Order Work;
- g. liability for costs incurred or to be incurred by the United States that are not within the definition of Future Response Costs or AOC Oversight Costs,
- h. liability for the Site that is not within the definition of RI/FS Work or Removal Order Work (including, but not limited to, injunctive relief or administrative order enforcement under Section 106 of CERCLA);
- i. liability for costs incurred or to be incurred by ATSDR related to the Site; and
- j. liability for the Anniston Lead Site.

32. Notwithstanding any other provision of this Consent Decree, the RI/FS Agreement, and/or the Removal Order, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

33. EPA reserves the right to assert that pursuant to 42 U.S.C. § 9613(h) that no court shall have jurisdiction to review any challenges to any removal or remedial action selected under 42 U.S.C. § 9604, including, but not limited to, the remedy selected in the ROD, or to review any order issued under 42 U.S.C. § 9606(a), based on this Consent Decree or the complaint filed with the Consent Decree.

34. EPA reserves the right to conduct all or a portion of the RI/FS Work and Removal Order Work itself at any point, to seek reimbursement from Defendants, and or to seek any other appropriate relief.

XI. COVENANTS NOT TO SUE BY DEFENDANTS

35. Covenant Not to Sue. Subject to the reservations in Paragraph 36, Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the RI/FS Work and Removal Order Work and for recovery of Future Response Costs and AOC Oversight Costs as defined herein or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; or

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Alabama Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

d. any direct or indirect claim for disbursement from the Anniston PCB Site Special Account.

36. The Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

37. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

38. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

39. The Parties agree, and by entering this Consent Decree this Court finds, that the Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. The “matters addressed” in this Consent Decree are Future Response Costs, AOC Oversight Costs, and RI/FS Work and Removal Order Work as defined herein.

40. The Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

41. The Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

XIII. DISCLAIMER

42. Defendants signing of this Consent Decree and taking actions under it shall not be considered an admission of liability and is not admissible in evidence against the Defendants in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Consent Decree or a judgment relating to it. Defendants retain their rights to assert claims against other potentially responsible parties at the Site. However, the Defendants agree not to contest the validity or terms of this Consent Decree, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

XIV. OTHER CLAIMS

43. Defendants agree not to assert, and may not maintain in this action or any subsequent administrative or judicial proceeding for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site that this Consent Decree, or the complaint filed with it, grants a court jurisdiction pursuant to 42 U.S.C. § 9613(h) to review any challenges to any removal or remedial action selected under 42 U.S.C. § 9604, including, but not limited to, the remedy selected in the ROD, or to review any order issued under 42 U.S.C. § 9606(a).

44. Nothing in this Consent Decree shall be construed to limit EPA's authority to take over all or a portion of the RI/FS, including, but not limited to, the Baseline Risk Assessment.

45. Nothing in this Consent Decree shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Consent Decree for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

46. In any subsequent administrative or judicial proceeding (including, but not limited to, any subsequent consent decrees lodged with this Court) for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case.

47. Defendants shall bear their own costs and attorneys' fees.

XV. EFFECTIVE DATE, SUBSEQUENT MODIFICATION, AND RETENTION OF JURISDICTION

48. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

49. Schedules specified in the attached RI/FS Agreement for completion of the RI/FS Work and Removal Order Work may be modified by agreement of EPA and the Defendants. All such modifications shall be made in writing.

50. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Defendants, and the Court, if such modifications fundamentally alter the basic features of the RI/FS Work. Modifications to the SOW that do not materially alter the basic features of the RI/FS Work may be made by written agreement between EPA and the Defendants.

51. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Defendants will be construed as relieving the Defendants of their obligation to obtain such formal approval as may be required by the attached RI/FS Agreement. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this the attached RI/FS Agreement are, upon approval by EPA, incorporated into the RI/FS Agreement.

52. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Defendants to effectuate or enforce compliance with its terms. Provided, however, nothing in this

Consent Decree, nor the complaint filed with it, shall provide this Court jurisdiction pursuant to 42 U.S.C. § 9613(h) to review any challenges to any removal or remedial action selected under 42 U.S.C. § 9604, including, but not limited to the remedy selected in the ROD, or to review any order issued under 42 U.S.C. § 9606(a).

XVI. APPENDICES

53. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the RI/FS Agreement.

“Appendix B” is the SOW.

“Appendix C” is the Removal Order.

“Appendix D” is Figure 1.

“Appendix E” is the CAG Information.

“Appendix F” is Table 1 of the RI/FS Agreement.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

54. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to the entry of this Consent Decree without further notice.

55. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties. Provided, however, the Removal Order shall remain in affect as a stand alone agreement if the Court declines to approve this Consent Decree.

XVIII. SIGNATORIES/SERVICE

56. Each undersigned representative of a Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

57. Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

58. Each Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Each Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XIX. FINAL JUDGMENT

59. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

60. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment with respect to a portion of the claims between and among the United States and the Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Pharmacia Corporation and Solutia Inc., relating to the Anniston PCB Superfund Site.

FOR Solutia Inc.

Date

Signature: _____
Name (print): _____
Title: _____
Address: _____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Pharmacia Corporation and Solutia Inc., relating to the Anniston PCB Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date

John C. Cruden
Acting Assistant Attorney General
Environment and Natural Resources

Division

U.S. Department of Justice
P.O. Box 7611
Washington, D.C., 20044

Date

William Weinischke
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Date

(Print:)
Assistant United States Attorney
Northern District of Alabama
U.S. Department of Justice
200 Fed. Bldg., 1800 Fifth Avenue North
RM. 200
Birmingham, AL 35203

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Pharmacia Corporation and Solutia Inc., relating to the Anniston PCB Superfund Site.

Date

Richard D. Green, Director
Waste Management Division
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Date

Dustin Minor
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Pharmacia Corporation and Solutia Inc., relating to the Anniston PCB Superfund Site.

FOR Pharmacia Corporation

Date

Signature: _____
Name (print): _____
Title: _____
Address: _____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____